

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND  
HARYANA AT CHANDIGARH**

**CRM-M-30094-2019 (O&M)**

**Reserved on : 29.01.2020**

**Pronounced on : 31.01.2020**

**Rajender Kumar**

**...Petitioner**

**Versus**

**State of Haryana and others**

**...Respondents**

**CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN**

Present:- Dr. Anand Kumar Bishnoi, Advocate  
for the petitioner.

Mr. Deepak Grewal, DAG, Haryana.

**ARVIND SINGH SANGWAN, J.**

1. Prayer in this petition is for setting aside the order dated 04.06.2019 (Annexure P-1) vide which the application dated 24.01.2019 (Annexure P-3) filed under Section 311 Cr.P.C. by the petitioner/complainant for recalling PW-10 has been dismissed in FIR No. 1046 dated 16.11.2014, registered under Sections 452, 323, 34, 302 (added later on) of the IPC and Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 at Police Station Sadar, District Hisar.

2. Brief facts of the case are that on the statement of Sujinder Singh, the aforesaid FIR was registered with the allegations that on 14.11.2011, he along with one Devender had gone to give dinner to one Vijay and when they reached at the spot, he (Vijay) was found lying on a cot bleeding profusely from his head and was having serious injuries on his

hands, stomach and legs. They took Vijay to General Hospital in their car, where the doctor gave him first aid and they also informed the relatives and father of Vijay, namely Bhale Ram. Thereafter, Vijay was shifted to Sapra Hospital. The police recorded the statement of Vijay on 22.11.2014 giving the details of the incident, however, injured Vijay later on died. It is further stated in the FIR that later on, complainant came to know that four persons with covered faces had come to the liquor vend and after giving injuries, they ran away from the spot.

3. Learned counsel for the petitioner has argued that when PW-10 Dr. Tarun Sapra appeared as a witness, he proved the treatment chart as Ex. PCC/1 to Ex. PCC/5 and made the following statement:

“Stated that on 14.11.2014, patient Vijay s/o Bhalle Ram, resident of village Bagla was admitted with history of assault. He had suffered kidney and spinal injury and operated for the same but the patient expired on 14.11.2014 during treatment. I have sent police ruqqa regarding admission Ex. PBB to the police station. Today I have brought original treatment record of patient Vijay. Ex. PGG is true photo copy of bed head ticket (consisting 1 to 114 leaves). Besides it, Ex. PHH is the report of NCCT head and Ex. PII is report of NCCT abdomen (consisting two pages) and x-ray report is EX. PJJ.

On 04.02.2015, IO ASI Ramesh Chander moved an application Ex. PKK regarding seeking opinion of weapon of offence used in the offence, upon which I gave my opinion EX. PKKK/1 which bears my signature. X-ray films are Ex.PLL/1 to Ex.PLL/5 and CT scan films to Ex.PMM/1 to EX. PMM/4.

Upon application dated 15.11.2014, an

application EX.PCC was moved before me regarding seeking opinion of fitness of patient, upon which, I gave my opinion Ex. PCC/1 to EX. PCC/4 and it was opined that patient was unfit to make any statement till 22.11.2014 and on 22.11.2014 patient was declared fit for making statement vide opinion EX. PCC/5. I had also sent ruqqa EX.PFF informing the Police regarding death of injured Vijay.

XXX by learned defence counsels.

It is correct that injuries mentioned in the MLR prepared by Doctors of G.H. Hospital, these injuries cannot be cause of death. It is correct that patient being conscious /semi conscious and fit to make statement are totally different to each other. It is correct that patient may be conscious but not necessary that he was fit to make statement. Patient remained unfit to make statement since his admission and till last i.e. when he expired. Police had sought opinion from me about his fitness to make statement but I had declared Vijay unfit to make statement and for this reason no statement of Vijay was recorded by the police in my presence. Since the patient remained throughout unfit to make statement till 22.11.2014 so there was no reason and occasion to get recorded his statement either by police or by me or by calling any Magistrate, however, patient was declared fit to make statement on 22.11.2014. There was no application for seeking fitness to make statement on by the Police on 22.11.2014. Police has visited my hospital and on their asking I had made by endorsement regarding fitness of injured. However, I did not mark presence of the IO nor I can tell name of that police official. It is correct that in endorsement. I had not mentioned the time of making the endorsement. No police official had asked me to be present at the time of recording statement of

injured. The statement of witnesses were not recorded in my presence. I had not sent any ruqqa regarding statement of injured from any Area Magistrate. The patient had expired on 24.11.2014. No Police official has approached me about knowing the condition of patient nor any statement was recorded on 23.11.2014 and 24.11.2014 in my presence. The injuries mentioned in MLR can be caused in a road-side accident, possibility cannot be ruled out. On 15.11.2014, Bhale Ram father of deceased had got factum of injuries to his son in a road side accident was mentioned to me. There was no signs that the patient was in emanate danger to die or that his condition was so critical that he could die.”

4. Learned counsel for the petitioner further submitted that thereafter the prosecution filed an application under Section 311 Cr.P.C. for summoning of Dr. Suruchi Sapra of Sapra Hospital, who was the assistant to Dr. Tarun Sapra as she had made endorsement on Ex. PCC/4 and Ex. PCC/5 regarding the fact that deceased Vijay was unfit for making the statement. The said application was contested by the accused and was dismissed on 19.07.2018 observing that the said documents Ex. PCC/2 to Ex. PCC/5 are already proved by PW-9 ASI Ramesh Chander and PW-10 Dr. Tarun Sapra.

5. Learned counsel for the petitioner further submitted that thereafter, the petitioner challenged the said order dated 19.07.2018 by filing a revision bearing CRR No. 2506 of 2018 before this Court, however, the same was dismissed as withdrawn on 30.10.2018.

6. Learned counsel for the petitioner further submitted that thereafter, on an application of the accused, the trial Court allowed the

further cross-examination of PW-10 Dr. Tarun Sapra, wherein he made the following deposition on 05.11.2018:

“It is correct that in Ex. PCC/5, fitness has not been declared by me and it is not in my hand and does not bear my signature. In between 20.11.2014 to 22.11.2014, there was no remarkable difference in the condition of patient as per record seen today.”

7. Learned counsel for the petitioner further submitted that after the re-examination of PW-10, the petitioner moved an application under Section 311 Cr.P.C. with a prayer to grant permission to re-examine PW-10 again. In the said application, it was stated that when PW-10 Dr. Tarun Sapra was called for further cross-examination and was re-examined on 05.11.2018, no opportunity was granted to the prosecution for further re-examination of this witness. This application was again contested by the private respondent/accused. It was stated in reply that PW-10 Dr. Tarun Sapra was called for further cross-examination on 05.11.2018 as some clarification regarding signatures on the record of treatment chart of patient Vijay was done and no new facts were brought in the further cross-examination on 05.11.2018 and, therefore, there was no violation of Section 137 of the Indian Evidence Act. The trial Court, vide impugned order dated 04.06.2019, dismissed the said application by making the following observations:

“1. This order of mine shall dispose of an application under Section 311 Code of Criminal Procedure, 1973 (hereinafter called Cr.P.C.) filed by complainant for re-calling PW10 Dr. Tarun Sapra, Sapra Multispecialty Hospital Hisar.

2. It is submitted that the prosecution examined Dr.

Tarun Sapra as PW10 and he was cross-examined by learned defence counsels on 06.11.2017. Thereafter, accused moved an application under Section 311 Cr.P.C. for further cross-examination of PW10 which was allowed and PW10 Dr. Tarun Sapra was re-called for further cross-examination. Accordingly, he was examined on 05.11.2018 but no opportunity was given to the prosecution for further re-examination of PW10 by the prosecution which is essential under Section 137 of Indian Evidence Act.

3. On the other side, learned defence counsels submitted that PW10 Dr. Tarun Sapra was called for further cross-examination on 05.11.2018 and some clarification regarding the signatures on the record of treatment chart of patient Vijay were clarified and nothing new appeared in his cross-examination dated 05.11.2018. On the said date, no request was made by the prosecution to the court for re-examination of the witness. Moreover, the present application has not been moved by the prosecution. The application, thus, deserves to be dismissed.

4. Heard.

5. Admittedly, accused moved application under Section 311 Cr.P.C for re-calling PW10 Dr. Tarun Sapra for further cross-examination which was allowed and his further cross-examination was recorded on 05.11.2018. No request was made by the prosecution on that day for reexamination of said witness. Even thereafter prosecution has not moved any application for re-examination of PW10 Dr. Tarun Sapra. The present application has been moved by the complainant himself. Thus, in such circumstances, I find no ground to re-call PW10 Dr. Tarun Sapra for his re-examination. The application in hand, thus, stand dismissed. Now to come up on 18.07.2019 for defence evidence, if any and

arguments.”

8. Learned counsel for the petitioner has further argued that once the trial Court has allowed further cross-examination of PW10, an opportunity should have been granted to prosecution to re-examine the said witness, however, without following the proper procedure, the trial Court has dismissed the application.

9. In reply, learned State counsel has, however, opposed the prayer of the petitioner on the ground that when the request for further cross-examination for clarification of signatures on Ex. PCC/5 was made, PW-10 Dr. Tarun Sapra has only stated that it did not bear his signatures.

10. Learned State counsel further submitted that no new facts were brought on record by PW-10 during his further cross-examination as a bare perusal of Ex. PCC/5 itself shows that it is signed by Dr. Suruchi Sapra.

11. Learned State counsel has further submitted that the case is now fixed for defence evidence and arguments. It has further been submitted that when the application, filed by the prosecution under Section 311 Cr.P.C. for summoning Dr. Suruchi Sapra as additional witness was dismissed on 19.07.2018, this fact was considered that the prosecution wants to prove the opinion Ex. PCC/5 which is under the signatures of Dr. Suruchi Sapra and it was observed that Ex. PCC/2 to Ex. PCC/5 stand proved by PW-9 Ramesh Chander and PW-10 Dr. Tarun Sapra. Learned State counsel further submitted that this order, dismissing the application under Section 311 Cr.P.C., had attained finality as the revision, filed by the petitioner before this Court against the said order, was withdrawn on 30.10.2018.

12. Learned State counsel further submitted that no purpose will be served by re-examining PW-10 Dr. Tarun Sapra as in the application under Section 311 Cr.P.C., no cogent reasons have been assigned and when this witness was called for further cross-examination on that day, no such request was made, rather the present application has been moved after a gap of almost one and a half year of the further cross-examination which was done on 05.11.2018.

13. Learned State counsel has further argued that it is well settled that just to fill up the lacuna, an application moved under Section 311 Cr.P.C. should not be moved repeatedly.

14. Learned State counsel has relied upon **2014 (1) SCC (Cri) 493 Dr. Rajesh Talwar and another vs. C.B.I. and another** to submit that where it is found that an applicant is adopting dilatory tactics, a criminal court is not obliged to accede to the request made by any party to entertain and allow the application for additional evidence and the court can refuse such request if it appears that the same is made in order to vex the proceedings or delay the same.

15. After hearing learned counsel for the parties, I find no merit in the present petition for the following reasons:

- (a) The application moved by the prosecution, under Section 311 Cr.P.C., for summoning Dr. Suruchi Sapra as additional witness to prove Ex. PCC/2 to Ex. PCC/5 was dismissed by the trial Court on 19.07.2018 and this order has attained finality as the revision, filed by the petitioner before this Court against the said order, was

withdrawn on 30.10.2018.

- (b) The petitioner rather moved an application before the trial Court when PW-10 Dr. Tarun Sapra was called for further cross-examination on 05.11.2018, wherein he has not brought any new facts and has only stated that Ex. PCC/2 to Ex. PCC/5 was not signed by him. A perusal of these documents shows that the **same were never signed** by Dr. Suruchi Sapra on behalf of PW-10 Dr. Tarun Sapra, therefore, filing of second application under Section 311 Cr.P.C. by the petitioner after a gap of almost one and a half year after further cross-examination of this witness is nothing but an attempt to fill up the lacuna in the evidence.
- (c) The medical reports, Ex. PCC/2 to Ex. PCC/5, have already been proved by PW-9 ASI Ramesh Chander and PW-10 Dr. Tarun Sapra.
- (d) In the application moved under Section 311 Cr.P.C., no cogent reasons have been assigned by the petitioner except that no further opportunity to re-examine PW-10 was granted when he was called for further cross-examination at the instance of accused persons. Needless to say, on that day, no request was made by the petitioner to this effect and since no new facts were brought on record by the said witness during his further cross-examination, the trial Court, well within its opinion, has

rightly not granted any such permission.

16. In view of the above discussion, finding no merit in the present petition, the same is hereby dismissed.

31.01.2020  
*Waseem Ansari*

(ARVIND SINGH SANGWAN)  
JUDGE

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|----------------------------------|---------------|
| <i>Whether speaking/reasoned</i> | <i>Yes/No</i> |
| <i>Whether reportable</i>        | <i>Yes/No</i> |